

Decision 05-07-025 July 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on policies and Practices for advanced metering, demand response, and dynamic pricing.

Rulemaking 02-06-001
(Filed June 6, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION
TO SAN FRANCISCO COMMUNITY POWER
FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 05-01-056**

This decision awards San Francisco Community Power¹ (SF Power) \$9,401.70 in compensation for its contribution to Decision (D.) 05-01-056. This represents a decrease of \$1,352.31 from the amount requested.

1. Background

Rulemaking (R.) 02-06-001 has been the forum for development of policies and strategies to enhance electric system reliability, reduce overall energy costs, and provide added environmental benefits through better management of how and when energy is used. D.05-01-056 approved demand response program plans for Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) for 2005. The proceeding remains open.

¹ San Francisco Community Power was previously called San Francisco Community Electric Cooperative and participated under that name in earlier phases of the proceeding.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award (subsequent statutory references are to the Public Utilities Code unless otherwise indicated):

- a. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
- b. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- c. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate significant financial hardship. (§§ 1802(g), 1804(b)(1).)
- e. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
- f. The claimed fees and costs are reasonable and comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items a-c above are combined, followed by separate discussions on Items d, e, and f.

3. Timing and Customer Status

The prehearing conference in this matter was held on July 16, 2002. SF Power filed its timely NOI on August 15, 2002. On September 16, 2002, Administrative Law Judge (ALJ) Carew issued a ruling that found SF Power to be a customer under the Public Utilities Code. SF Power filed its request for compensation on March 15, 2005, within 60 days of D.05-01-056 being issued.²

4. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its NOI, SF Power asserted financial hardship and stated it then had 316 residential members and 28 business members. All of the residential members were defined as low to middle-income customers with annual electricity bills of \$2,000 or less. Of the 28 business members, 25 had annual electricity bills less \$5,000. The remaining three business members had annual bills in excess of \$50,000. SF Power asserted that the three large business members do pay higher dues than the standard assessment, but that they are in no position to and do not subsidize the SF Power's efforts on behalf of its entire membership.

² No party opposes the request.

In the September 16, 2002 ruling, ALJ Carew determined that the presence of the three larger business members would not preclude a finding of eligibility for the broader organization, where the majority of members are residential and small business customers. As stated in the ruling, the Commission would determine, at the compensation stage, what percentage of SF Power's total membership actually faced a significant financial hardship, and consistent with prior decisions, reflect that determination in its final compensation award. These prior decisions (see D.98-02-012, D.98-02-099 and D.02-06-014) generally state that any members with annual electricity bills over \$50,000 would not be considered as incurring hardship and therefore would not be eligible for compensation.

In its previous request for compensation, filed May 5, 2003, SF Power showed that its membership grew since the filing of the NOI and that it had 833 members, including five with annual bills over \$50,000. On June 20, 2005, counsel for SF Power communicated with the ALJ that the previously filed figures should have been updated to reflect that SF Power now has 1,690 members, of which four have annual bills over \$50,000.³

In previous intervenor awards, we have used the \$50,000 figure as a benchmark to disallow any compensation, based on percent of total membership, to any customers with annual bills over this amount. Using the pro rata formula described above, SF Power's award will be reduced by 0.24% (1686/1690 ratio) to reflect its membership that meets the financial hardship requirements.

³ A copy of that email communication has been placed in the correspondence file for R.02-06-001.

With this finding, SF Power has satisfied all the procedural requirements necessary to make its request for compensation.

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could

⁴ D.98-04-059, 79 CPUC2d, 628 at 653.

find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions SF Power made to the proceeding.

SF Power's involvement was narrow but important to the outcome of D.05-01-056. SF Power's involvement in this aspect of the proceeding began after the ALJ issued her draft decision. SF Power reviewed the ALJ's draft decision, attended workshops, discussed program details with other parties, and filed comments on the draft decision. SF Power focused primarily on the San Francisco Business Energy Partnership proposed by PG&E and The Energy Coalition with a budget of \$2.5 million and a goal of 10 MW of demand reduction. Prior to SF Power's involvement, the ALJ draft decision rejected the proposed Business Energy Partnership. In deciding to approve the program with modifications, the Commission stated "It is the discussion in comments by SF Power, rather than those provided by either PG&E or The Energy Coalition, that convince us that incremental funding for such a program is appropriate." (D.05-01-056, p. 35.)

SF Power made a substantial contribution as described above. After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

6. Reasonableness of Requested Compensation

SF Power requests \$10,754.00 for its participation in this proceeding, as follows:

Advocate	Year	Rate	Hours	Total
Magee	2004	\$35	10	\$350.00
Moss	2004	\$175	10.4	\$1,820.00
Magee	2005	\$35	13	\$455.00
Moss	2005	\$175	37.6	\$6,580.00
McCann	2005	\$175	3	\$525.00
Moosen	2005	\$132.50	7.5	\$993.75
Subtotal				\$10,723.75

Supplies	\$30.26
Total	\$10,754.01

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Also to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Dealing first with productivity, SF Power did not specifically attempt to quantify the benefits of its participation, although it noted that because of its input, the Commission chose to fund a \$2.5 million, 10 MW demand reduction goal program that it would not have otherwise funded. SF Power's focus was on supporting improved delivery mechanisms for demand response, and for that reason, it is difficult to identify precise monetary benefits to ratepayers. However, SF Power's focus on policies that support innovative approaches to delivering firm demand reduction should have lasting benefits to ratepayers. We find that to the extent energy usage is lowered through effective demand reduction programs, ratepayers benefit monetarily by avoiding energy costs. We also find that these programs, which improved through SF Power's participation, have other social benefits that are hard to quantify but substantial. Thus, we find that SF Power's efforts have been productive.

Next, we assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. SF Power documented its claimed hours by presenting a daily breakdown of the hours of its attorney and experts, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

SF Power did not separate the hours associated with preparation of this compensation request for its experts and instead requests compensation at its full hourly rate for this time.⁵ Consistent with our long-standing policy of discounting time associated with preparation of compensation matters by 50%, we will reduce the hourly rate applied for the 6 hours expert Moss spent on the compensation request.

Since we found that SF Power's efforts made a substantial contribution to D.05-01-056, we need not exclude from SF Power's award compensation for certain issues. However, we do not compensate SF Power for time claimed for staff member Magee, whose requested time is described as "Clerical Support." As described in D.00-02-044, compensation is not awarded for clerical and administrative time. This long-standing practice was re-affirmed in D.05-02-005, when the Commission found that "[c]osts for administrative overhead...are built into the fees of professionals and consultants." (2005 Cal. PUC LEXIS 57, [*14].)

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. SF Power seeks an hourly rate of \$265 for work performed by attorney Moosen in 2005, \$175 for work performed by expert Moss in 2004 and 2005, and \$175 for work performed by expert McCann in 2005. The Commission has previously

⁵ SF Power correctly billed its attorney time at half the hourly rate.

approved these rates for work performed by Moosen, Moss, and McCann in D.03-09-067, and we find these rates reasonable here.

The itemized direct expenses submitted by SF Power total \$30.26. We find these costs reasonable. The appendix to this opinion summarizes today's award.

7. Award

As set forth in the table below, we award SF Power \$9,401.70, adjusted to reflect the percentage of its membership that has established a significant financial hardship.

Advocate	Year	Rate	Hours	Total
Moss	2004	\$175	10.4	\$1,820.00
Moss	2005	\$175	31.6	\$5,530.00
Moss/comp	2005	\$87.50	6	\$525.00
McCann	2005	\$175	3	\$525.00
Moosen	2005	\$132.50	7.5	\$993.75
Subtotal				\$9,393.75
Supplies				\$30.26
Total				\$9,424.01
Adjusted				\$9,401.70

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after SF Power filed its compensation request and continuing until full payment of the award is made.

We direct PG&E, San Diego Gas & Electric Company, and Southern California Edison Company to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2004 calendar year. These three utilities should share the payment responsibilities because, although the Business Energy Partnership is a program specific to PG&E, the principles supporting the program's adoption should be broadly applicable to all three utilities.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SF Power's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. SF Power made a substantial contribution to D.05-01-056 as described herein.
2. SF Power requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.
3. Clerical support time is not awarded compensation.
4. Time associated with preparation of compensation matters is discounted by 50%.
5. The award should be reduced by 0.24% to reflect the percentage of SF Power's membership that has not established a significant financial hardship.
6. The total of the reasonable compensation is \$9,401.70.

7. The Appendix to this opinion summarizes today's award.

Conclusions of Law

1. SF Power has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-01-056.

2. SF Power should be awarded \$9,401.70 for its contribution to D.05-01-056.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that SF Power may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. San Francisco Community Power is awarded \$9,401.70 as compensation for its substantial contributions to Decision 05-01-056.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall pay SF Power their respective shares of the award. Each utility's share shall be calculated based on their California-jurisdictional electric revenues for the 2004 calendar year. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 29, 2005, the 75th day after the filing date of SF Power's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0507025	Modifies Decision? NO
Contribution Decision(s):	D0501056	
Proceeding(s):	R0206001	
Author:	ALJ Cooke	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
San Francisco Community Power	3/15/2005	\$10,754.00	\$9,401.70	No	Administrative time not compensable, failure to discount intervenor compensation preparation time, § 1812 adjustment

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Irene	Moosen	Attorney	San Francisco Community Power	\$265	2005	\$265
Steven	Moss	Policy Expert	San Francisco Community Power	\$175	2004	\$175
Steven	Moss	Policy Expert	San Francisco Community Power	\$175	2005	\$175
Richard	McCann	Policy Expert	San Francisco Community Power	\$175	2004	\$175